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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6615 OF 2007

IN

INT.NOTICE NO.733 OF 2007

IN

R.A.E. SUIT NO. 594 OF 2004

M/s.Neelkanth Mansions P.ltd

and Ors.

...Petitioners

Versus

Mr.Chandrakant Kantilal Rashputra

....Respondents

Mr.K.D.Jha for the petitioners.

Mr.C.J.Sawant for the respondents.

**CORAM: S.C.DHARMADHIKARI, J.**

**14th December, 2007.**

**P.C. :**

1. Heard the learned counsel appearing for the parties. This Writ Petition is directed against an

Order passed by the Trial Court on an interim notice bearing no. 733 of 2007 on 29.6.2007.

2. This was an interim notice taken out by the petitioner/plaintiff. The suit which was filed is admittedly praying that possession be handed over by the defendant/respondent before me, so as to enable the petitioner/landlady to put up a new construction.

3. The Learned Judge has refused to consider the prayer of the petitioner/plaintiff to allow him to file additional Affidavit of evidence, additional affidavit of documents and Undertaking.

4. It is undisputed before me that when the Plaint was lodged in the trial court, the written Undertaking as per Section 16(6) of the Maharashtra Rent Control Act was not filed. The Learned Judge has adverted to the said provision and considering the mandate flowing from the same has taken a view that the permission to file an Undertaking after the suit was filed and listed before him at the stage of evidence is not permissible. Section 16(6) reads as under :

"Section 16(6)(d) - (d) that the landlord has given an undertaking, -

(i) that the plans and estimates for the new building or new floor or floors to be erected by the landlord include premises for each tenant with carpet area equivalent to the area of the premises in his occupation in the building sought to be demolished subject to a variation of five per cent in the area;

(ii) that the premises specified in sub-clause (i) will be offered to the concerned tenant or tenants in the re-erected building or, as the case may be, on the new floor or floors;

(iii) that where the carpet area of premises in the new building or on the new floor or floors is more than the carpet area specified in sub-clause (i) the landlord shall, without prejudice to the liability of the landlord under sub-clause (i), obtain the consent 'in writing' of the tenant or tenants concerned to accept the premises with larger area; and on the tenant or tenants declining to give such consent the landlord shall be entitled to put the additional floor area to any permissible use;

(iv) that the work of demolishing the premises shall be commenced by, the landlord not later than one month, and shall be completed not later than three months, from the date he recovers possession of the entire premises; and

(v) that the work of erection of the new building or new floor or floors shall be completed by the landlord not later than fifteen months from the said date:

Provided that, where the court is satisfied that the work of demolishing the premises could not be commenced or completed, or the

work of erection of the new building or, as the case may be, the new floor or floors could not be completed, within time, for reasons beyond the control of the landlord, the court may, by order, for reasons to be recorded, extend the period by such further periods, not exceeding three months at a time as may, from time to time, be specified by it, so however that the extended period shall not exceed twelve months in the aggregate. "

5. The Learned Judge has observed that the decisions relied upon by the petitioner/plaintiff can be of no assistance. The matter is at the stage of evidence. At that stage, additional documents including the Undertaking cannot be filed. Apart from the fact that the Learned Judge has adverted to Order 18 Rule 17 of the CPC and Section 151 thereof, ultimately, he has held that at this belated stage, no permission can be granted to the witness to file an Undertaking and fill up the lacuna.

6. In the peculiar facts of this case, I do not feel that the discretion exercised by the Learned Judge is either arbitrary or capricious or untenable in law, so as to, warrant interference under Article 227 of the Constitution of India.

7. Mr.Jha, learned counsel for the petitioner could not dispute that the petitioner can always file a fresh suit and an undertaking therewith. It is not as if he is remediless in the matter. Therefore, the petition is devoid of any merits and is accordingly dismissed. No costs.

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